

Welcome

Welcome to the new DBA monthly newsletter, which we trust you will find informative and helpful.

DBA provides a comprehensive range of superannuation, tax and succession planning services.

This newsletter will cover ongoing changes in these areas that impact our clients.

The Pension PDS

From 11 March 2004, trustees of self managed superannuation funds (SMSF) will have to issue a Product Disclosure Statement (PDS) whenever a member converts from growth to pension phase.

A PDS is a statement prepared by the issuer of a financial product containing all of the information that a person would reasonably require for the purpose of making a decision whether to acquire the product.

While a PDS can be provided by the trustee of an SMSF within 3 months from the establishment of the fund, a pension PDS must be provided at the earlier of: (a) the trustee acknowledging receipt of the member's election to take a pension; or (b) on the trustee making the first pension payment. There is no 3 month period of grace.

A PDS must be worded and presented in a clear, concise and effective manner and include information about significant benefits and risks, costs and any other significant characteristics or features of the product, the rights, terms, conditions and obligations attaching to the product and any applicable cooling-off regime.

While a pension PDS should contain generic information such as the characteristics of different types of pensions, it should be tailored to the member's specific circumstances and should include information about:

- the type and term of the pension;
- administration, taxation, legal and actuarial costs of establishing and running the pension;
- advantages and disadvantages of the particular type of pension;
- whether the pension is commutable or reversionary; and
- estate planning implications of the pension.

This edition of DBA News includes:

- Pension PDS required from 11 March 2004
- Binding Death Benefit Nominations & SMSFs
- Forthcoming DBA Network Seminars
- New DBA Staff

The Pension PDS (cont)

Limited Exemption

The trustee of an SMSF will not be required to provide a PDS if it reasonably believes that the member has received, or has, and knows they have, access to all of the information that the PDS would be required to contain.

Some trustees and their advisers will rely on this exemption. To do so, however, may be unwise, as the exemption requires the member to have extensive knowledge of superannuation, including pensions and it is an offence punishable by a significant penalty not to provide a PDS when required to do so.

Trustees and advisers seeking to adopt best practice will ensure a PDS is provided. Typically, this is in the best interests of members, trustees and advisers in any event.

Conclusions

From 11 March 2004, trustees of SMSFs will generally have to issue a PDS whenever a member of the fund converts from growth to pension phase. The PDS should contain comprehensive information for making an informed decision.

Seeking to rely on the exemption may result in exposure not only for trustees, but also for advisers.

DBA can assist in documenting pensions to comply with the new PDS regime.

By: Louise Barbaro

DBA has recently released a comprehensive service on [Wills, Estates and Succession Planning](#). The service was first published by ATP in 1997 and was completely updated by DBA in late 2003. It is full of technical and practical information and strategies. Visit our web site at www.dbabutler.com or contact us if you would like to order.

Binding Nominations

Many question the value of binding death benefit nominations (BDBN).

However, DBA firmly believes that BDBNs can play a crucial role in estate planning where the superannuation moneys are significant (whether by way of fund balance and/or insurance proceeds).

For example, if a couple with children who want to make a BDBN, then they usually leave their super to the surviving spouse. However, what if the spouse does not survive?

The BDBN can then distribute the super to the children. However, what if a child predeceases leaving children of their own? These grand-children are generally not 'dependants' for superannuation purposes. Thus, the benefit that is directed to the grand-children must be paid to the estate and dealt with in accordance with the person's Will.

The further question that must be asked is: what if there is no surviving spouse or children? In this case, the super can be distributed to the person's estate and be dealt with under their Will.

The above highlights the vital link between a person's BDBN and their Will. To do a BDBN without reconsideration of a person's Will could be dangerous!

Moreover, there are many BDBNs prepared that merely nominate one person in a form, eg, the person's spouse or children, without any further direction. These standard forms are often incapable of addressing more complex issues.

Further, there are many BDBNs that expire at the end of 3 years. The SMSF trust deed can, however, incorporate a BDBN clause which allows an indefinite nomination to be made.

DBA BDBNs are often drafted like a Will to address the above issues.

By: Daniel Butler

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Forthcoming Seminars

The *DBA Network* will be holding 5 x ½ day workshops at the Savoy Hotel, Melbourne throughout 2004.

The first workshop is on the morning of **19 March 2004** covering a number of practical case studies on SMSFs and estate planning.

DBA's lawyers also regularly present seminars for adviser firms to supplement their in-house training programs.

Please contact us for further details.

New DBA Staff

Ian Waters

Ian joined us in November last year as a Senior Associate. He graduated from the University of Melbourne in 1991 with law and commerce degrees.

Ian gained considerable commercial experience with Gadens Ridgeway Lawyers (now part of Deacons) and with a publicly listed diversified group of manufacturing companies. He has practical experience managing SMSFs and family trusts.

Ian will complete a Graduate Diploma in Applied Finance and Investment at the Securities Institute of Australia this year.

Immediately, prior to joining DBA, Ian was working as a superannuation lawyer with IFS Fairley and Holding Redlich, where he practised mainly in superannuation law, particularly SMSFs.

Andrea Comini

Andrea recently joined us as an Articled Clerk; having finished her Law and Economics degrees at Monash University in 2003. Andrea has previously worked for several major law firms as a law clerk.